

NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rule-making information that does not fit into any other category of notice; and other types of information required by statute to be published in the *Register*. Because of the variety of material that is contained in a Notice of Public Information, the Office of the Secretary of State has not established a specific format for these notices.

NOTICE OF PUBLIC INFORMATION DEPARTMENT OF FINANCIAL INSTITUTIONS

[M09-375]

1. **Name of the Agency:** Department of Financial Institutions
Title and its heading: 20, Commerce, Financial Institutions, and Insurance
Chapter and its heading: 4, Department of Financial Institutions
Articles and their headings: 13, Loan Originators (New Article)
Section numbers: New Sections
2. **The public information relating to the listed Sections:**

Introduction. Statutes enacted by Arizona's 49th legislature in its first regular session have charged the Department of Financial Institutions ("DFI") with establishing new fees, standards, and procedures for loan originators. This Notice is to advise the public and members of the regulated community of the fees, standards, and procedures being considered by DFI in the period during which an emergency rulemaking proceeding is pending. These fees, standards and procedures are being implemented at present as stated here, and will be established by rulemaking as soon as possible.

Fees and Educational Standards for Loan Originators.

House Bill 2143 ("HB2143") amends Arizona statutes originally passed in 2008, requiring DFI to license, supervise, and regulate Loan Originators. This license has not been required in Arizona previously. The statute became effective October 1, 2009. The compliance date, from and after which loan originators cannot do business unless licensed, is July 1, 2010.

The Governor has given DFI permission to make rules that will implement the loan officer licensing program established by HB2143. Proposed Emergency Rules have been submitted to the office of the Arizona Attorney General for review and will become effective upon approval by the Attorney General. Those emergency rules will govern the initial licensing process, and the educational requirements that are material to initial licensing. They are set out below, although the final legally effective rules are subject to change during the Attorney General's review.

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

The rules in this Article apply to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

R20-4-1302. Course of Study to Qualify for Licensure

- A. A course provider shall submit the following items to the Superintendent to request approval of the course of study it offers:
1. Course materials;
 2. Class content outlines on a session-by-session basis; and
 3. Sample final exam.
- B. The Superintendent shall approve the course provider's course of study upon review of the items submitted under subsection A if the Superintendent determines the proposed course of study contributes to the development, maintenance, and improvement of professional competence. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory the Superintendent may withhold or suspend approval. The Superintendent shall, under the authority of A.R.S. § 6-991.03(E) and (F), approve courses that have been approved by the Nationwide Mortgage Licensing System.
- C. An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 units of instruction, and
 2. Receiving a passing grade of not less than 75 percent correct answers on the final examination required by A.R.S. § 6-991.07.
- D. A "unit" of class instruction, as that term is used in this article, shall consist of a minimum of 50 continuous minutes of instruction.
- E. A course of study shall include 20 units of instruction in the following areas:

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1. Federal law and regulation, including the Real Estate Settlement Procedures Act (“RESPA”), the Truth in Lending Act (“TILA”), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act (“ECOA”) and the Fair Credit Reporting Act (“FCRA”)3 units
2. Business ethics, including fraud, consumer protection laws, and fair lending practices3 units
3. Non-traditional mortgage product lending standards2 units
4. Arizona real estate and mortgage lending law, including loan origination & processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws4 units
5. The remaining 8 units should be comprised of instruction in the obligations between principal and agent, the statutory and regulatory law governing loan originators, arithmetical computations common to mortgage lending, principles of real estate lending, the purpose and effect of mortgages, deeds of trust, and security agreements, the terms and conditions of conforming and non-conforming residential mortgages, real estate appraisal and the principles of appraisal independence.

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application or,
2. Depositing with the Superintendent the bond specified by A.R.S. § 6-991.03(B)(6).

R20-4-1304. Fees

Loan Originator program fees shall be as set out in this subsection:

1. Application fee (non-refundable): \$350;
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal): \$150;
3. Annual renewal fee or fee for change to inactive status: \$150;
4. Transfer license to new employer: \$50;
5. Change residence address: \$50;
6. Examination fee: The amount charged by the vendor;
7. Late fees: \$25 per day after the filing deadline.

R20-4-1305. Education Units

- A. Loan originators can earn education units, as defined in Section R20-4-1302(D), by attendance at classes, or participation in interactive online class sessions. Units shall be approved by the Superintendent if they contribute to the development, maintenance, and improvement of professional competence.
- B. The Department shall give credit for education units, as defined in R20-4-1302(D). Credit shall be given for whole units only.
- C. A loan originator may earn education units for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.
 1. Qualified programs shall:
 - a. Be developed by persons knowledgeable and experienced in the subject matter;
 - b. Provide written outlines or full text;
 - c. Be administered by an instructor or organization knowledgeable in the program content; and
 - d. Utilize teaching methods consistent with the study program.
 2. An ethics program taught or developed by an employer or co-worker of a loan originator does not qualify for the ethics requirements of subsection R20-4-1302(E)(2).
- D. Applicants shall deliver to the Department an affidavit detailing the education units they have completed, together with original certificates evidencing completion for each unit. The affidavit shall show:
 1. Sponsoring organization,
 2. Location of program,
 3. Title of program or description of content,
 4. Education units earned, and
 5. Dates of attendance.
- E. Applicants shall maintain for three years, and provide the Superintendent upon request, the following documents: course outline, proof of attendance or participation, and photocopied certificates evidencing completion.

DFI will, immediately upon approval of the emergency rules, begin a regular rulemaking to include continuation of the emergency rules and to add rules that are a part of the licensing program but are not of an emergency nature.

4. The following public hearings have been scheduled regarding the listed Sections:

None. A regular rulemaking will begin as soon as the emergency rules are in effect. Public comment and possible public hearings will be announced during that proceeding.

5. The name, address, and telephone number of the agency personnel to whom questions and comment on this Notice of Public Information may be addressed:

Name: John P. Hudock
Address: 2910 N. 44th St., Suite 310
Phoenix, AZ 85018
Telephone: (602) 771-2800, ext 12774
Fax: (602) 381-1225
E-mail: jhudock@azdfi.gov

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NOTICE OF PUBLIC INFORMATION

OFFICE OF THE GOVERNOR

[M09-256]

TO: State Agency Directors and Acting Directors
FROM: Governor Janice K. Brewer
SUBJECT: Continuation of Regulatory Review Plan (Moratorium)
DATE: June 29, 2009

I am continuing the rulemaking moratorium issued January 22, 2009, which was extended to April 30, 2009, to October 16, 2009. The memorandum of January 22, 2009 and April 29, 2009 detailing the moratorium shall remain in effect until that date.

Agencies shall submit any requests for exceptions to the rulemaking moratorium in writing for rulemakings that impact critical public peace, health and safety functions of the agency, that address the state budget deficit, implement the ARRA, *or that are deregulatory*. The Governor's Office will review any such notification and determine whether exception is appropriate under the circumstances.

As stated in the previous moratorium of January 22, 2009 and the extension dates April 29, 2009, independent agencies are encouraged to participate voluntarily within the context of their own rulemaking processes.

Communications regarding exceptions to the moratorium, or questions regarding the moratorium generally, should be addressed to Jeri Kishiyama Auther, Policy Advisor, Rules and Regulations at jauther@az.gov.

NOTICE OF PUBLIC INFORMATION

OFFICE OF THE GOVERNOR

[M09-179]

TO: State Agency Directors and Acting Directors
FROM: Janice K. Brewer
Governor
SUBJECT: Continuation of Regulatory Review Plan (Moratorium)
DATE: April 30, 2009

My staff is in the process of evaluating information received from the agencies, boards, and commissions regarding new and pending rulemakings during the rulemaking moratorium. In order to complete this process, I am extending the rulemaking moratorium issued January 22, 2009 from April 30, 2009 to June 30, 2009. During the moratorium, my staff identified some administrative rules that should have been repealed some time ago. Examples of administrative rules identified so far include:

Department of Economic Security, 6 A.A.C. 13, Articles 2,3,6,8,9, and 12; A.A.C.R6-1-501;
Arizona Department of Administration, 2 A.A.C.R2-1-604 and R2-1-605;
Department of Racing, A.A.C.R19-2-115.10;
Arizona State Retirement System, A.A.C.R2-8-104, R2-8-116, and R2-8-119; and
Department of Health Services, A.A.C.R9-19-115, R9-19-404, and R9-19-406.

During the continuation of the moratorium, I am requiring agencies to identify administrative rules that (1) are no longer necessary due to changes in state or federal law or case law, (2) are not effective, (3) are inconsistent with current agency practice, or (4) are not enforced. Agencies shall identify obsolete rules and submit the report to Jeri Kishiyama Auther, Policy Advisor, Rules and Regulations, no later than the close of business on May 25, 2009.

Regulatory Moratorium

In addition to the memorandum issued January 22, 2009, the following applies:

1. Agencies shall continue to comply with the Five-year Review requirements of A.R.S. § 41-1056 *et seq.* and the reporting requirements of A.R.S. § 41-1091; and
2. Agencies shall comply with the intent of the moratorium and ensure that substantive policy statements as defined in A.R.S. § 41-1001(20) do not violate A.R.S. § 41-1033.

Regulatory Moratorium – Clarifications

Additionally, the following clarifications to the moratorium issued January 22, 2009 apply:

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1. Docket Openings and proposed rules filed with and published by the Secretary of State before January 22, 2009 need not be withdrawn. Docket openings and proposed rules are viable for a year after publication under A.R.S. § 41-1021. Agencies may, however, voluntarily file a Notice of Termination of Rulemaking with the Secretary of State. Agencies shall not conduct oral proceedings on the rulemakings subject to the moratorium and may file a Notice of Public Information with the Secretary of State to cancel any scheduled oral proceedings;
2. Agencies shall withdraw docket openings or proposed rulemakings filed with, but not yet published by, the Secretary of State; and
3. Agencies shall submit any requests for exceptions to the rulemaking moratorium in writing for rulemakings that impact critical public peace, health and safety functions of the agency, that address the state budget deficit, implement the ARRA, or that are deregulatory. The Governor's Office will review any such notification and determine whether exception is appropriate under the circumstances.

As stated in the previous moratorium of January 22, 2009, independent agencies are encouraged to participate voluntarily within the context of their own rulemaking processes.

Communications regarding exceptions to the moratorium, or questions regarding the moratorium generally, should be addressed to Jeri Kishiyama Auther, Policy Advisor, Rules and Regulations at jauther@az.gov.

This memorandum shall be published in the Arizona Administrative Register.

**NOTICE OF PUBLIC INFORMATION
OFFICE OF THE GOVERNOR**

[M09-19]

TO: State Agency Directors and Acting Directors
FROM: Janice K. Brewer
Governor
SUBJECT: Regulatory Review Plan
DATE: January 22, 2009

In order to ensure that my appointees have the opportunity to review any new or pending rules, I am asking that you immediately take the following steps, subject to the exception process as described in paragraph 9:

1. Send no proposed or final rule to the Secretary of State for the publication in the Arizona Administrative Register.
2. File no notice of proposed rule making with the Secretary of State or begin or continue any activities in preparation for the rule making, including informal rule making activities.
3. With respect to proposed rules that have been sent to the Secretary of State but not published in the Arizona Administrative Register, withdraw them from the Secretary of State.
4. With respect to proposed rules that are final but have not been submitted to the Governor's Regulatory Review Council (GRRC) for approval, postpone filing the rules with GRRC.
5. With respect to proposed rules that have been submitted to the GRRC for approval, postpone filing rules approved by GRRC with the Secretary of State.
6. With respect to proposed rules that are final but have not been submitted to the Attorney General for approval, postpone filing the rules with the Attorney General.
7. With respect to proposed rules that have been submitted to the Attorney General for approval, withdraw the rules from consideration by the Attorney General.
8. Provide the Governor's Office a list and brief summary of each rule making activity within your agency no later than February 16, 2009.
9. Notify the Governor's Office promptly in writing of any rule making activity that, in your view, impacts critical public peace, health and safety functions of the agency or that are needed to address the state budget deficit and therefore should be also excluded from the directives in paragraphs 1-7. The Governor's Office will review any such notifications and determine whether exception is appropriate under the circumstances.

The directives in paragraphs 1-7 shall remain in effect until April 30, 2009.

As used in this memorandum, "rule" has the meaning as defined in A.R.S. § 41-1001(17).

Finally, in the interest of sound regulatory practice and the avoidance of costly, burdensome, or unnecessary rules, independent agencies are encouraged to participate voluntarily within the context of their own rulemaking processes.

This regulatory review will be implemented by the Governor's Office. Communications regarding exceptions to the review, or

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questions regarding the review generally, should be addressed to Richard Bark, Deputy Chief of Staff for Policy at rbark@az.gov.

This memorandum shall be published in the Arizona Administrative Register.